

## **REMARKS**

Applicant acknowledges receipt of the Office Action dated June 19, 2008, in which the Examiner rejected claims 1, 2, 8, 10, 14, 15, and 20 as anticipated by US Patent 2,998,085 to Dulaney; indicated that claims 13 and 16-19 would be allowable if rewritten in independent form; and indicated that claims 3-7, 9, 11, and 12 are allowed.

Applicants have again amended the claims and submit that the case is in condition for allowance for the reasons set out below.

### **Finality**

In a telephone interview with the undersigned, the Examiner informed the undersigned that the finality indicated on the office action mailed June 19, 2008 was in error and that the office action should be treated as a non-final office action. Therefore this Response is filed under 37 CFR 1.111, and not under 37 CFR 1.116.

### **Claim rejections under 35 USC § 102**

Claims 1, 14, and 15 have each been amended to recite that the bit includes a drilling head and that the axial cutters and shear cutters are mounted on the drilling head and do not move relative to each other. This amendment clearly distinguishes the claims from the teachings of Dulaney, as Dulaney teaches a bit in which a chopping tool moves up and down relative to a scraping tool.

Applicant therefore respectfully submits that claim 1 is in condition for allowance, along with claims 2, 8, 10, and 16-20, which depend from it, and claims 14 and 15.

### **Allowable claims**

The Examiner indicated that claims 3-7, 9, and 11-2 are allowed and indicated that claims 13 and 16-19 would be allowable if re-written in independent form.

Claims 13 and 16-19 have not been amended but Applicant submits that they are allowable and in condition for allowance for the reasons set out above with respect to claim 1.

Concluding remarks

Applicant believes that every rejection raised in the Office Action has been addressed. Applicant therefore respectfully requests that the amendments be entered and submits that the application is now in condition for allowance.

In the event the Examiner has any questions or issues regarding the present application, he is invited to telephone the undersigned prior to the issuance of any written action.

Respectfully submitted,  
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